International Journal of Political Science, Law and International Relations (IJPSLIR)
ISSN (P): 2278-8832; ISSN (E): 2278-8840
Vol. 9, Issue 2, Dec 2019, 1-18


# AN OWNERSHIP AND GOVERNANCE STRUCTURE OF INDIA'S INSOLVENCY PROFESSIONAL AGENCIES

**ABHISHEK HALDER**

*Academic Associate, Communication Area, Indian Institute of Management Ahmedabad, Ahmedabad, Gujarat, India*

***ABSTRACT***

***Owing to frequent personal and corporate insolvency cases and high average time taken for resolution of such cases in India, the legal framework for bankruptcies was revisited. Erstwhile piece-meal legislations like Presidency towns insolvency act 1909, Provincial insolvency act 1920, Companies act 1956, Sick industries companies act 1985, Recovery of debts due to banks and financial institutions 1995 and Securitization and reconstruction of financial assets and enforcement of security interest act 2002 were relooked comprehensively, thereafter resulting into the Insolvency and Bankruptcy Code of India 2016 enacted by Indian Parliament. The Code deals with insolvency of individuals, corporate and partnership firms and lays down a time-bound procedure for resolution of such cases with the help of insolvency professionals. The Insolvency and Bankruptcy Board of India, hereafter referred as IBBI, was constituted as the regulator empowered to register insolvency professionals and insolvency professional agencies and as the guardian of information utilities. Under the Code, the insolvency professional agencies are envisaged as front-line implementation vehicles that will have a corporate identity as section 8 company, vide Companies Act 2013, for maintaining fair competition among them in insolvency resolution. However, the ownership, governance structure and empowerment of insolvency professional agencies are not defined in the Code. IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) regulations 2016 provide guidance on the bye-laws, governance model and constitution of insolvency professional agencies. IBBI (Insolvency Professional Agencies) regulations 2016outlines the procedure for registration, approval, surrender and cancellation of insolvency professional agencies. This paper discusses the insolvency administration and governance models of bodies equivalent to insolvency professional agencies in Canada, Singapore and United Kingdom. It assesses the prevalent models abroad based on parameters of composition and independence of governing board, management structure, regulatory oversight and business operating model. The author summarizes the cross-country experiences and suggests a suitable and effective model for ownership and governance of India's insolvency professional agencies.***

***KEYWORDS:** Insolvency, Bankruptcy, Insolvency and Bankruptcy Code, Insolvency Professionals, Insolvency Professional Agencies, Information Utilities & Section 8 Company*

**Received:** May 10, 2019; **Accepted:** May 30, 2019; **Published:** Jun 24, 2019; **Paper Id.:** IJPSLIRDEC20191

**Original Article**

## INTRODUCTION

India has struggled for years to deal with problems of impending bankruptcies and bad debts plaguing her governance and economy. The history of insolvency and bankruptcy law in India began in early 20th century with two archaic laws – Presidency town's insolvency act 1909 and Provincial insolvency act 1920. The former was applicable to individuals residing in presidential towns of Bombay, Calcutta and Madras while the latter was applicable to those dwelling in the rest of India. These laws were inefficient as they laid down an arduous civil court procedure for individual insolvency. The Government of India Act 1935 envisaged dual control of the Union

and States for the subject of insolvency and bankruptcy similar to United States. Although the subject is listed under Concurrent List in the Seventh Schedule of the Indian Constitution, there is no history of state legislation on this subject in post-independence India and the matter is left to the Centre in entirety. Till 1985, corporate insolvency and bankruptcy was governed by Companies Act 1956 that contained provisions for voluntary dissolution and compulsory winding up of firms. It also provided for resolution process and empowered an official liquidator for dissolution. But it failed to deal with insolvencies because it neglected the cost of insolvency proceedings, the business expertise and acumen of a liquidator. Consequently, most of the cases landed in the already overburdened High Courts with each court promulgating disparate and at times conflicting case laws. With industrial sickness reaching alarming proportions and downsizing of companies in early 1980s, Sick Industries Companies Act (referred as SICA hereafter) was enacted in 1985 based on Tiwari Committee recommendations to address this chronic problem of Indian economy and release investment locked up in sick companies for productive use elsewhere. The act had its own shortcomings like it was applicable only to industrial undertakings and section 22 dealing with moratorium was misused to defer action by creditors resulting in inefficiency of the established institutional machinery. The Recovery of Debts Due to Banks and Financial Institutions Act 1993 (referred as RDDBFI hereafter) enacted after Narasimhan Committee-I recommendations provided for establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) for expeditious adjudication and recovery of debts due to banks and financial institutions. Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (referred as SARFAESI hereafter) enacted following the recommendations of Narasimhan Committee-II enabled and empowered secured creditors to take possession of their securities and to deal with them without the intervention of the court. Alternatively, the act authorized any securitization or reconstruction company to acquire financial assets of any bank or financial institution. Later, Justice Eradi Committee recommended repeal of SICA and to shift the provisions relating to revival and rehabilitation of sick companies to the Companies act 1956 vide the Companies (Second Amendment) act 2002. It provided for constitution of National Company Law Tribunal (referred as NCLT hereafter) and National Company Law Appellate Tribunal (referred as NCLAT hereafter) replacing Board of Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) that were empowered by SICA for revival and rehabilitation of sick and potentially sick companies owning industrial undertakings. However the provisions were not notified and never enforced. Subsequently, SICA Repeal Act 2003 was enacted but due to delay in the constitution of NCLT, SICA repeal act was not notified. The SICA repeal act was finally notified with the enactment and enforcement of Insolvency and Bankruptcy Code 2016. In 2001, Reserve Bank of India (RBI) constituted L. N Mitra Committee which proposed a comprehensive bankruptcy code. In 2008, Planning Commission formed a Raghuram Rajan Committee, which proposed improvements to credit infrastructure. In 2013, Financial Sector Legislative Reforms Commission under Justice Sri Krishna came out with draft Indian Financial Code which included a Resolution Corporation for resolving distressed financial firms. Finally in 2014, bankruptcy law reforms committee chaired by Dr. T. K Vishwanathan formulated the Insolvency and Bankruptcy Code 2016 (referred as “the Code” hereafter).

The objective of Insolvency and Bankruptcy Code 2016 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish Insolvency and Bankruptcy Board of India. The Code consists of 5 Parts and 11 Schedules. Part I deals with preliminary sections 1, 2 and 3. Part II (Section 4 to Section 77) explains insolvency resolution and liquidation for corporate persons. Part III (Section 78

to section 187) is regarding insolvency resolution and bankruptcy for individuals and partnership firms. Part IV (Section 188 to Section 223) deals with regulation of insolvency professionals, agencies and information utilities. Part V consists of miscellaneous sections 224 to 255. Chapter III of Part IV mentions the provisions related to Insolvency Professional Agencies (referred as IPA hereafter). Section 199 states that no person shall function as IPA without valid certificate of registration from Insolvency and Bankruptcy Board of India (referred as IBBI hereafter). Section 200 lists down the principles governing the registration of IPA. Section 201 deals with application, suspension and cancellation of registration of IPA. Section 202 is related to appeal to NCLT by aggrieved IPA. Section 203 outlines the governing board of IPA and Section 204 elaborates the functions of IPA. Furthermore, Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 and Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 were notified under the Code. The Insolvency system in India is being very recent, the ownership and governance model of its functioning isn't much concretized yet. According to IBBI (Model Bye-laws and Governing Board of Insolvency Professional Agencies) Regulations 2016, IPA will consist of a Governing Board having a board of directors. The composition of Governing Board must be of at least seven directors. Of these, minimum half of the directors should be a resident in India during their appointment and tenure. At most, one-fourth of the directors can be insolvency professionals and minimum four independent directors must be present in the Governing Board. All the directors will collectively elect an Independent director as the Chairman of the Governing Board. The IPA may require member insolvency professionals to pay a fixed sum as annual membership fee. The functions of IPA as per section 204 of the Code include:

- To grant memberships to insolvency professionals on payment of fee
- To lay down standards of professional conduct
- To safeguard rights, privileges and interest of insolvency professionals
- To suspend/cancel membership of insolvency professionals
- To redress grievances of consumers against insolvency professionals
- To publish information about members, functions etc.

The Code specifies that the management structure of IPA should consist of an advisory committee to advise on matters of development of insolvency profession, standards of professional and ethical conduct, and best practices in insolvency resolution, liquidation and bankruptcy. In addition, there shall be other regulatory committees of IPA, namely Membership Committee, Monitoring Committee, Grievance Redressal Committee, Disciplinary Committee. The chairperson of each of the committees shall be an independent director of IPA. The governing board is empowered to frame disciplinary policy, monitoring policy and grievance redressal policy for the discharge of the functions assigned to them. Each of the committees has been empowered with various roles and responsibilities. The monitoring committee is responsible to provide frequency of monitoring, manner and format of submission or collection of information, use, analysis and storage of information, performance evaluation of members. It shall be non-discriminatory and have due regard for privacy of members. The grievance redressal committee has been mandated to provide for format and manner for filing grievances, maximum time and format for acknowledging receipt of grievance, maximum time for disposal, details of mediation mechanism, action to be taken in case of malicious or false complaints, maintaining register of grievances made and resolutions arrived at. The disciplinary committee is empowered provide the manner of ascertaining

facts by disciplinary committee, issue of show-cause notice based on facts, disposal of show-cause notice by a reasoned order, timelines for stages of disposal of show-cause notice, rights and obligations to the parties to the proceedings. The independence of the chairman, method of election and functioning of the governing board has not been explained under the Code and its regulations. Regulatory oversight of IPA was vested in IBBI which functions under the Ministry of Corporate affairs, Government of India. However, the Code did not specify the business operating model of IPA that are envisaged as corporate entities for fair competition among them with the objective of quick resolution.

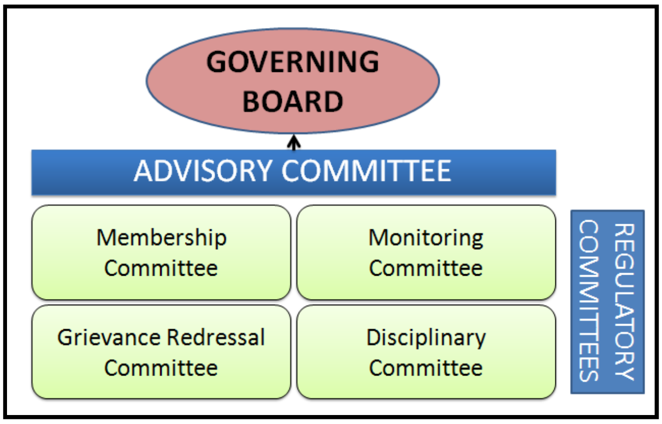


**Figure 1: Management Structure of Indian Insolvency Professional Agencies**

Governance involves two critical components – transparency and accountability. On one hand, accountability is related to ownership of responsibilities and abiding by the established bye-laws while on the other hand, transparency is congruent to seamless process of delivery as per neatly laid down process layouts and standards. Cross-functional synergy is another important element of governance without which inter-departmental friction can hinder service delivery. Therefore, governance structure of Indian IPA must encapsulate all the tenets and principles of efficient governance mechanism. The composition of the Governing Board, its management structure, appointment and tenure of the chairperson and the operating model of the IPA was delegated by the Code to the regulator, IBBI. This paper investigates this aspect through cross-country experiences, established mechanisms and demonstrated efficiencies so that the Indian insolvency system could be comparatively competitive as per global standards. The rationale for choosing countries for cross-country comparison included the average time taken for resolving insolvency along with degree of equivalence to insolvency professional agencies in insolvency administration. According to the World Bank report 2018, Canada and Singapore have one of the least average resolution timeline of 0.8 years each for insolvency cases. The United Kingdom's insolvency practitioners' associations have a high degree of equivalence with the insolvency professional agencies. Moreover, the Code drew substantially from the United Kingdom's insolvency act while it was being formulated.

## LITERATURE REVIEW

The review of literature was based on national legislations in different countries related to insolvency and bankruptcy law and their reforms. Besides, commentaries and corporate evaluative reports were also studied to gauge their performance. In Indian context, Companies Act 2013 under chapter II defines a section 8 company as a limited company having its objects of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object. It mandates such a company to apply its profits or any other income in promoting its objects and to prohibit the payment of any dividend to its members. Section 8 of Companies Act 2013 also mentions other provisions of registration, memorandum, articles and commencement of business. All insolvency

professional agencies have been envisaged as a section 8 company by the Code. According to the World Bank's ease of resolving insolvency, the distance to frontier score captures the gap between an economy's performance and a measure of best practice across the entire sample of 41 indicators for 10 ease of doing business topics. The frontier represents the best performance on the indicator of resolving insolvency across all economies since 2005 or third year in which the data was collected. Both the best performance and worst performances are established every five years based on 'Doing Business' data for the year in which they are established and remain at that level for the five years regardless of any changes in data in interim years. The difference between an economy's distance to frontier score in any previous year and its score in current year demonstrates the extent to which the economy has closed the gap to regulatory frontier over time. The ease of resolving insolvency distance to frontier score is based equally on the recovery rate and strength of the insolvency framework index. The recovery rate is a function of time required to recover debt in years, cost required to recover debt as a percentage of debtor's estate and outcome on a nominal score on the basis of whether the business continues operating as a going concern or whether its assets are sold piecemeal. The strength of insolvency framework index includes commencement of proceedings index, management of debt's assets index, reorganization proceedings index and creditor participation index. In the United Kingdom, the Insolvency Act 1986 governs the bankruptcy administration in the country. Articles of Association of Insolvency Practitioners Association and Memorandum of association of Insolvency Practitioners Association provide information on the insolvency administrative framework in the United Kingdom. It mentions the classes of members and their eligibility conditions along with the activities and powers of United Kingdom's Insolvency Practitioners Association. Memorandum and Articles of Association of Insolvency Practitioners Association of Singapore Limited provide information of the structure and functioning of the Insolvency Practitioners Association of Singapore. Bylaws of the Canadian Association of Insolvency and Restructuring Professionals states the rules and conventions followed in the functioning of the Canadian Association of Insolvency and Restructuring Professionals. The report on the statutory review of the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA) explains thoroughly the bankruptcy legislative provisions in Canada. Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations 2016 and Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations 2016 together provide guidance on designing the structure and functioning of the Insolvency Professional Agencies in India. Ernst and Young report on interpreting the Code – Corporate Insolvency in India provides a fair interpretation of the Code in terms of efficiency of insolvency process in India. Rajeswari Sengupta and Anjali Sharma's work in 2005 on corporate insolvency resolution in India incorporating lessons from cross-country comparison. The website of Insolvency and Bankruptcy Board of India provides information on the rules and regulations formulated under the various sections of the Code.

## RESEARCH OBJECTIVE

The paper analyzes the functioning of IPA equivalent bodies in Canada, Singapore and United Kingdom on the basis of the following parameters:

- Composition of the Governing Board of IPA
- Management structure of IPA
- Appointment and independence of the chairperson of IPA
- Business and operating model of the insolvency professional agencies

- Regulatory oversight of insolvency administration in India

The research objective is to suggest a suitable and sustainable governance model for India's insolvency professional agencies so that they are empowered to improve insolvency administration in the country.

## RESEARCH METHODOLOGY

The research methodology adopted is international comparative case-based study of the prevalent insolvency governance structure of the bodies equivalent to Indian IPA. The average time taken to resolve insolvency cases under the insolvency regime prior to the Code was 4.3 years. Thus, one of the key issues to be considered while analyzing governance structure is efficiency to deliver its mandate.


**Figure 2: Time to Resolve Insolvency (Years), World Bank, doing Business Project (http://www.doingbusiness.org/)**

Canada from the western world and Singapore from the eastern world have well-established insolvency regimes which are good models for benchmarking and comparative analysis, each having efficiencies of 0.8 years insolvency resolution time. The United Kingdom has a robust insolvency framework and the mechanism of professional agencies driving resolution process is similar to the insolvency resolution process envisaged by the Code. The average time taken to resolve insolvency cases in the United Kingdom is 1 year, according to the World Bank Doing Business data. Therefore, the United Kingdom's insolvency model is relevant for comparative study of governance structures. Now, let us deep-dive into individual countries' insolvency regimes to understand their governance models and established mechanisms of insolvency administration in a better way.

### United Kingdom

In the United Kingdom, Insolvency Act 1986 authorizes Recognized Professional Bodies (referred as RPBs hereafter) to regulate and give licenses to qualified insolvency professionals. The licensed insolvency professional acts as liquidator, administrator (for company insolvencies) and trustee in bankruptcy (for personal insolvency). The seven RPBs under insolvency act 1986 are Association of Chartered Certified Bodies (ACCA), Chartered Accountants Regulatory Board (CARB), Insolvency Practitioners Association (IPA), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), Law Society of England & Wales, Law Society of Scotland.

United Kingdom's Insolvency Practitioners Association (referred as U. K.'s IPA hereafter) is a membership body recognized for the purpose of authorizing or licensing insolvency professionals (IPs) under Insolvency Act 1986. It is the only one among the seven RPBs which is solely involved in insolvency. The principal aims of U. K.'s IPA is to promote and maintain standards of performance and professional conduct among those engaged in insolvency practice, and to encourage wider knowledge and understanding of insolvency within and outside the insolvency profession through examinations, qualifications and membership for exposure and discussion of insolvency issues. The U. K.'s IPA is a company limited by guarantee without share capital. It is a membership organization for those in insolvency practice or involved in insolvency-related work. It has around 2,000 individual and firm members and students. In terms of the number of IPs regulated, it is the second largest of the RPBs recognized by the Secretary of State for Energy and Industrial Strategy (BEIS), under the Insolvency Act 1986. Additionally, it undertakes monitoring and inspection activities under contract for those practitioners authorized by the Association of Chartered Certified Accountants (ACCA). The Joint Insolvency Exam (JIE) is conducted for those who wish to become an insolvency professional. About 200 students sit for JIE every year. The U. K.'s IPA is one of the entry bodies for Joint Insolvency Exam. It also administers Certificate of Proficiency in Insolvency (CPI), Certificate of Proficiency in Personal Insolvency (CPPI) and Certificate of Proficiency in Corporate Insolvency (CPPI)examinations which aim at those involved in insolvency administration or insolvency related work, leading to qualification which is recognized throughout insolvency profession and in related fields. Continuous Professional Education (CPE) is offered by the U. K.'s IPA in a structured manner in the form of annual conferences, personal insolvency conference and regional road shows. Besides, it operates online learning platform 'The Excellent IP' for providing distance learning.

**Management Structure**

In United Kingdom, Council of Members manages the business of the U. K.'s IPA. At any point of time, the council consists of a maximum of 16 members. The Council performs all powers as may be exercised on behalf of the U. K.'s IPA. The Council can delegate any (but not all) of its powers and discretions to committees. At a given point of time, the Council consists of President and President-elect, Vice-President and Vice-President-elect, Deputy Vice President and Deputy Vice President-elect, co-opted members and other members. In the next annual general meeting, Deputy Vice President is replaced by Deputy Vice President-elect, Vice President replaced by Vice President-elect, President replaced by President-elect. At every AGM, one quarter of the members of the Council for the time being (or number nearest to one quarter) shall retire from office.

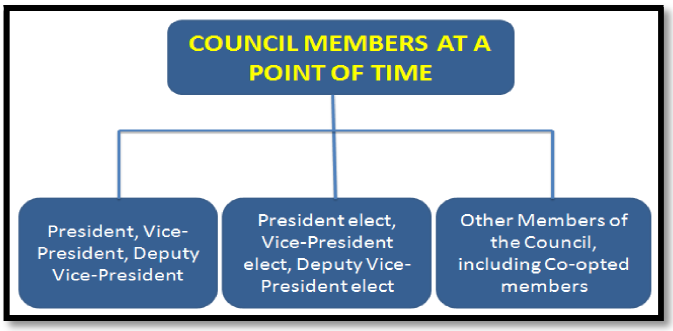


**Figure 3: Structure of Governing Council of U. K.'s IPA**

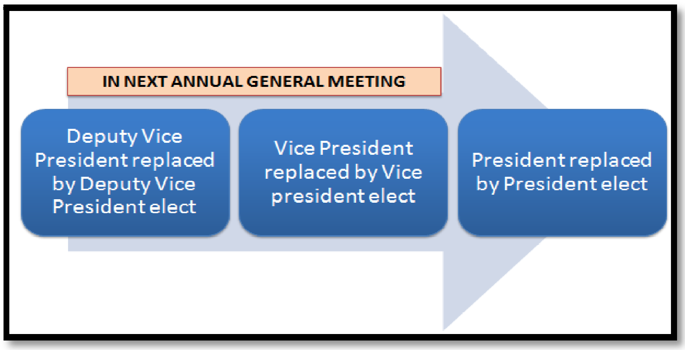


**Figure 4: Successive Appointment of President, Vice-President and Deputy Vice-President**

The Governing Council appoints a secretary, deputy secretary and/or assistant secretary, for such term, at such remuneration and upon such conditions as the council may determine. The secretary, his deputy or his assistant do not need to be members of the U. K.'s IPA but any individual member shall be eligible for appointment to any of those offices, but no Member of Council may be so appointed. In addition, the council consists of co-opted members. Every notice of annual general meeting confirming the appointment of a co-opted member shall state the term for which such member has been appointed. A co-opted member retiring at the expiration of his appointment shall be eligible for further co-option and shall not be subject to retirement. Any such co-opted member (who is otherwise eligible for election) shall be eligible for election as a member of council at any subsequent annual general meeting. Any member of Governing Council of the U. K.'s IPA cannot be a member of four regulatory committees of the U. K.'s IPA, namely membership and authorization committee, investigation committee, disciplinary committee and appeal committee. The membership of every other committee shall at all times include at least one member of council. The composition of four regulatory committees of the Governing Council is listed below:

**Table 1: Four Regulatory Committees of Governing Council of United Kingdom's Insolvency Practitioners' Association**

| | |
|---|---|
| Membership & Authorization Committee (minimum 5 members) | Investigation Committee (minimum 5 members) |
| Disciplinary Committee (minimum 7 members) | Appeal Committee (minimum 8 members) |

Membership and Authorization Committee consists of a minimum of five members. At least four of its members shall be registered as the U. K.'s IPA members and lay members constitute at least one and at most three members of the committee. Investigation Committee consists of a minimum of five members. At least four of its members shall be registered as the U. K.'s IPA members and lay members constitute at least one and at most three members of the committee. Disciplinary Committee consists of minimum of seven members. At least five of its members shall be registered as the U. K.'s IPA members and lay members constitute at least two members. Appeal Committee consists of minimum of eight members. At least four of its members shall be registered as the U. K.'s IPA members and lay members constitute at least four members.

Other Committees of the Council include Constitution Committee, Consultation Committee, Examinations and Training Committee, Finance Committee, Standards, Ethics and Regulatory Liaison Committee and Personal Insolvency Committee. Constitution Committee oversees the U. K.'s IPA's Constitution Documents (memorandum and articles of association) and its rules and recommends changes to it. Consultation Committee discusses proposals for legislative

changes to corporate insolvency and submitting U. K.'s IPA's responses. Examinations and Training Committee advises council on regulations; for arrangements of setting, holding and marking the U. K.'s IPA's examinations. It also liaisons with Joint Insolvency Examination Board for Joint Insolvency Examination (JIE). Finance Committee prepares annual budgets and recommends to Council on subscriptions and fees. It monitors in-year spending and submits annual accounts. Standards, Ethics and Regulatory Liaison Committee advises Council on profession-wide standards, professional conduct and ethics. Personal Insolvency Committee discusses proposals for legislative changes to personal insolvency.

**Business Model**

**Table 2: Business Model of United Kingdom's Insolvency Practitioners' Association**

<table>
<tr>
<td><u>Key Activities</u><br>1. Library of periodicals, journals, circulars, books etc.<br>2. Conduct exams, training<br>3. Conduct lectures, debates, conferences, exhibitions etc<br>4. Establish subsidiaries to act as agents of association</td>
<td rowspan="2"><u>Principal Objects</u>:<br>➢ Promote & maintain high standards of practice in the performance and discharge of all functions & powers regarding Insolvency Administration<br>➢ Advance education in the theory & practice of Insolvency Administration</td>
<td><u>Customer Segments</u><br>6 Classes get membership of IPA:<br>1)Member Firms<br>2)Individual Members (ordinary, fellows & retired members)<br>3) Honorary members<br>4) Affiliates<br>5) Affiliate firms<br>6) Student members</td>
</tr>
<tr>
<td><u>Cost Stream</u><br>1. Reasonable remuneration or pensions to members<br>2. Interest on money lent<br>3. Indemnity insurance premiums<br>4. gifts, grants or contributions for national, public, education or charitable purposes</td>
<td><u>Revenue Stream</u><br>1. Raises funds, invites and receives contributions from any person(s) by way of subscription, donation<br>2. Borrow or lease or hire for promotion of objects of IPA</td>
</tr>
</table>

The key activities of the U. K.'s IPA include conducting lectures, debates, conferences, seminars and exhibitions using the revenue streams of raising funds, subscription fees, donation etc. It can also borrow, lease or hire for promotion of its objects. The principal objects of the U. K.'s IPA is to promote and maintain high standards of practice in the performance and discharge of all functions and powers regarding insolvency administration, to advance education in the theory and practice of insolvency administration. There are six classes of membership namely, member firms, individual members who can be ordinary members, fellows and retired members, honorary members, affiliates, affiliate firms and student members. The cost streams for the U. K.'s IPA is mainly in the form of reasonable remuneration paid to members, members' pensions, indemnity insurance premiums for its members, interest paid on the borrowed amount and gifts, grants or contributions for national, public, education or charitable purposes. The income and property of the U. K.'s IPA is to be applied solely towards the promotion of its objects. No portion of income is paid as dividend, bonus or by way of profit to members of the U. K.'s IPA and no member of Council is paid by salary or fees or receive any remuneration.

**Independence of the President**

The President of the Governing Council is appointed in every annual general meeting. The Vice President-elect of the previous annual general meeting becomes the President in the current annual general meeting. The tenure of the Council President varies from 12-15 months as every annual general meeting must take place no more than 15 months following previous annual general meeting. Time and place of annual general meeting is determined by the Council. Immediate past president is not eligible to be Member of the Council. The President is an individual member in good standing with the U. K.'s IPA and one who is not disqualified to be member of the Council. The removal of the Council

President is through resignation by notice in writing to the Secretary he resigns such office or through disqualification from being member of council. The conditions for disqualification from being appointed as Council President include absence from four consecutive meetings of Council without special leave of absence from Council, if one ceases to be qualified as Insolvency professional, on the event of death or resignation by notice in writing to Secretary and if there is an appeal against him by Appeal Tribunal. In case of casual vacancy, Council member becomes Deputy Vice-President, Deputy Vice-President becomes Vice-President and Vice-President becomes President.

**Regulatory Oversight**

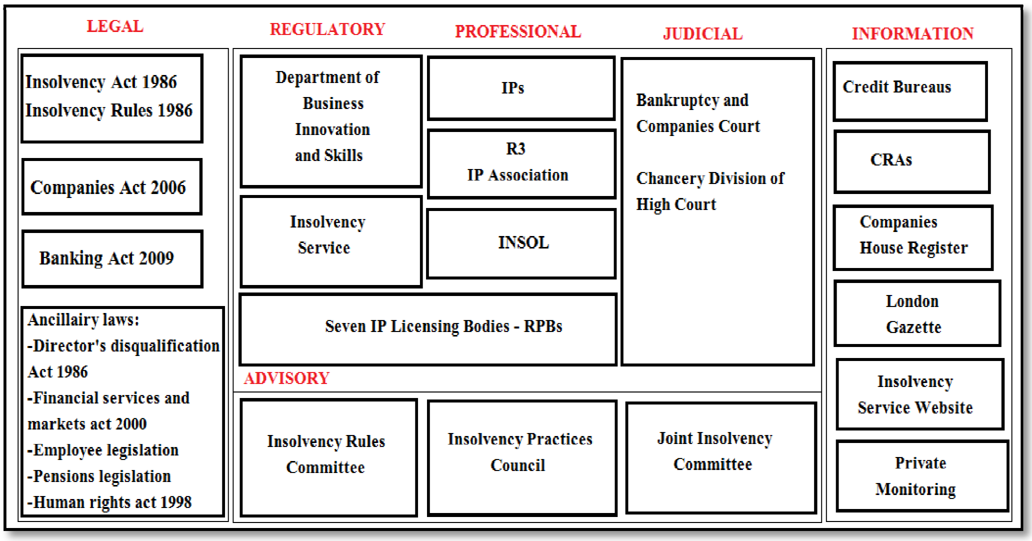


**Figure 5: Regulatory Oversight in U. K**

The key objectives of oversight are to ensure that there is a level of professionalism, competency and ethics among the appointed practitioners. There are three levels of regulatory oversight:

- Secretary of State for Business Innovation and Skills Department – It is tasked with recognizing certain professional bodies for authorizing their members to act as Insolvency Representatives.
- The Insolvency Service –It is an executive agency of the Business Innovation and Skills Department. It monitors the recognized professional bodies to ensure compliance with memorandum of understanding and principles of monitoring. It has the responsibility for insolvency legislation, overseeing development of regulatory policy and professional standards, providing guidance to the profession.
- Recognized Professional Bodies (RPBs) –It's responsibility lies in the providing license to Joint Insolvency Examination Board to conduct exams, setting up their own membership rules and regulations and signing memorandum of understanding with Secretary of State. It is responsible for licensing of insolvency professionals. RPBs undertakes monitoring visits so that the professional standards are met.

**Canada**

Canadian Association of Insolvency and Restructuring Professionals (referred as CAIRP hereafter), created in 1979 as non-profit organization, is a national professional organization. Almost 90% of Licensed Insolvency Trustees, licensed under Canada's Bankruptcy and Insolvency Act (referred as BIA hereafter), are its members. CAIRP has two task

forces, namely Task force on priorities of consumer insolvency reform and Task force for exploring commercial issues. The Vision of CAIRP is to be a pre-eminent association for the education, standards and advocacy of insolvency and re-structuring professionals. The Mission of CAIRP is to promote excellence among members, to provide relevant professional development, to establish and enforce rules of conduct and standards of practice, and to advocate fair, transparent and effective insolvency system. Insolvency Institute of Canada (IIC) and CAIRP submit their reviews to Industry Canada (IC).

**Management Structure**

| Directors | Criteria |
|---|---|
| 1 Each | Provincial Associations of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador |
| 2 Each | Professional Association of Ontario, Quebec |
| One (1) | Member of CPA Canada and is in good standing |
| Two (2) | Outside directors, who can positively contribute to the affairs of the Association as per Nominating Committee |
| One (1) | New member representative, who is a current member and must have been a member for less than 5 years |
| Three (3) | Directors at large, who are members of the association |
| **Total 18 members** | **Board of Directors** |

**Figure 6: Composition of Governing Board in U. K**

The Governing Board of CAIRP consists of Board of Directors with 18 members. Out of these 18 members, two must be outside directors, three from Directors-at-large, one of New Member Representative, one number from Chartered Professional Accountants of Canada (referred as CPA Canada hereafter), two members from each of the professional association of two provinces and one member from each provincial association of each of seven provinces. The President and Chief Operating Officer shall be an observer at meetings of the Board, and shall have the right to notice of, and to attend and participate in meetings of the Board, but shall not be entitled to vote. Board cannot delegate the power to determine fees or levy assessments and the power to appoint officers of the association.

Directors are elected for a term of two years. A director may be elected for a maximum of two consecutive terms after which this director can only be re-elected after the expiration of at least one year. If a director is appointed as replacement for a departed director other than at the beginning of a normal term, the period served under the appointment shall be taken into account only if the appointment was made for a period of more than one year, reckoning from one annual general meeting to the next. CPA Canada representative is elected for a term of two years and may be re-elected for a second term of two years. New Member Representative is elected for a term of two years, and is not re-elected as a New Member Representative. Meetings of the Board are held at least two times in each financial year at such times and places as the Chair or Vice-Chair or any five directors shall determine and reasonable notice of such meetings shall be given to all directors.

**Table 3: Four Regulatory Committees of Governing Board of Canadian Association of Insolvency and Restructuring Professionals**

| Executive Committee | |
|---|---|
| Nomination Committee | Professional Conduct Committee |
| Discipline Committee | Appeal Committee |

The CAIRP consists of Executive Committee and 4 regulatory committees, namely Nomination Committee, Professional Conduct Committee, Discipline Committee and Appeal Committee. If the departing member is a Nomination Committee Member, the Executive Committee shall make the appointment. In all other cases, the Board shall make the appointment. Except powers that act specifies not be delegated by the Board, the Executive Committee may from time to time exercise any of the powers of the Board without resolution of the Board. Final order of the Discipline Committee takes effect 30 days after the date it is made unless it is appealed to the Appeals Committee, in which case the final order is stayed unless the Appeals Committee directs otherwise. The Professional Conduct Committee may appoint investigators, including persons employed by the Association. The Professional Conduct Committee shall investigate every complaint, including a complaint filed by a representative of the Association that a member of the Association engaged in professional misconduct. Subsequently, Discipline Committee shall hear every matter referred to it by the Professional Conduct Committee. If the Committee finds any member engaged in Professional Misconduct, it may expel, suspend membership, issue reprimand or directions. Finally, Appeal Committee shall hear the appeal and may (a) make any order that could have been made by Discipline Committee (b) order a new hearing or (c) dismiss the appeal. An order of the Appeals Committee is final and is not subject to further review or challenge

**Business Model**

**Table 4: Business Model of Canadian Association of Insolvency and Restructuring Professionals**

<table>
<tr><td><u>Key Activities</u><br>1. Publish periodicals, journals, circulars, etc.<br>2. Conduct examinations, professional development<br>3. Provide insolvency counseling, training courses<br>4. Organise conferences and debates on insolvency</td><td rowspan="2"><u>Principal Objects</u>:<br>➢ Advocate administration of insolvency and reorganization with fairness, transparency and efficiency across Canada<br><br>➢ Advocate CAIRP members as front line professionals on all insolvency & reorganization issues & act as their spokespersons</td><td><u>Customer Segments</u><br>5 Classes get membership:<br>1) Member<br>2) Inactive Members<br>3) Associates (Corporate, Life & Articling Associates)<br>4) Honorary members<br>5) Fellows</td></tr>
<tr><td><u>Cost stream</u><br>1. Scholarships & bursaries<br>2. Security Interest on debt<br>3. Indemnity insurance<br>4. Out-of-pocket expenses of members<br>5. Pensions and gratuities to CAIRP staff</td><td><u>Revenue Stream</u><br>1. Annual membership dues, annual dues of any associate and additional dues levied by board<br>2. Borrow money on credit, Bill of Exchange, promissory notes<br>3. Issue, re-issue, sell debt obligations</td></tr>
</table>

The principal objective of CAIRP is to advocate administration of insolvency and reorganization with fairness, transparency and efficiency across Canada and to advocate CAIRP members as front line professionals on all insolvency and reorganization issues and act as their spokespersons. Towards this objective, CAIRP undertakes key activities like publishing periodicals, journals, circulars etc., conducting examinations and professional development courses, providing insolvency counseling and training courses and organizing conferences and debates on insolvency. The revenue for these activities is generated from annual membership fees, annual dues of associates and additional dues levied by the board,

borrowed money through credit, bill of exchange and promissory notes, selling debt obligations etc. There are five membership classes namely member, inactive member, associate (corporate, life and articling associates), honorary member and fellow. The costs incurred are in the form of scholarships and bursaries, security interest on debt, indemnity insurance premiums for its members, pensions and gratuities of staff and out-of-pocket expenses of members.

**Independence of the Chairman**

Nominating Committee nominates candidates from directors who in the opinion of the committee are suitable to fill the office of the chair. Upon arrival of names by the Board, the nominated candidates shall have their names put forward for election. The Chair is elected by majority of votes in the board of directors. The board may, at its discretion and at any time, remove from office the Chair on a vote of at least 75% of all the directors other than the chair who is being removed. Prior written notice regarding a motion to remove the Chair shall be presented at a meeting of the Board and must be given to all directors, including the chair concerned. The Chairman should be a member of the association who meets the following qualifications:(a) No findings by Professional Conduct Committee, Discipline Committee or any criminal court in the preceding three years(b) Not subject to any order, direction, term, condition or limitation of Professional Conduct Committee or Discipline Committee(c)No outstanding fees, fines or orders against him/her imposed by association or court or regulatory body(d)Not disqualified from Board or any Committee in preceding three years(e) Not been a member of the staff at any time within preceding three years

**Regulatory Oversight**

**Table 5: Regulatory Framework in Canada's Insolvency Regime**

| Office of the Superintendent in Bankruptcy– Under Federal Department of Industry Canada | Supreme Court of Canada |
|---|---|
| Bankruptcy and Insolvency Act | Federal Court of Appeal |
| Companies' Creditors Arrangement Act | Provincial Courts of Appeal |
| Winding-up and Restructuring Act | |

Insolvency law and matters are regulated by Office of the Superintendent in Bankruptcy (referred as OSB hereafter), an agency under Federal Department of Industry Canada. CAIRP supports efforts of OSB through memorandum of understanding regarding possible changes in regulatory framework. All insolvency cases are heard by the Supreme Court of Canada which consists of Federal Court of Appeal and Provincial Courts of Appeal. OSB has following three arms, namely Bankruptcy and Insolvency Act (for personal bankruptcies and statutory restructurings), Companies' Creditors Arrangement Act (for restructuring of large insolvent corporations), Winding-up and Restructuring Act (for specialized restructuring and liquidation of entities). Objectives of OSB are:

- Maintain efficient and effective regulation
- Promote awareness of rights and duties of stakeholders
- Ensure trustee and debtor compliance with framework
- Integral source of info on Insolvency matters

**Singapore**

Insolvency Practitioners Association of Singapore (referred as IPAS hereafter) was incorporated as a company limited by guarantee on 12 April 2005 pursuant to the recommendations of the Company legislation and regulatory

framework committee with the following founding members - Institute of Singapore Chartered Accountants (ISCA) and Law Society of Singapore (Law Soc). The income and property of IPAS wherever derived shall be applied solely towards the promotion of the objects of the company. No portion of income shall be paid to or transferred as dividend, bonus or by way of profit to the members, associates, corporate associates, student associates or fellows. The Mission of IPAS is to be the premier professional body for insolvency profession. The objectives of IPAS are as below:

- Provision of a corporate identity and organization for IPs
- Associate, Fellow and Student registration
- Support and advance the status and interest of insolvency practitioners
- Provision of recognized qualifications for persons engaged in the practice of insolvency
- Promotion of technical competence of insolvency practitioners
- Provision of updates on developments in insolvency legislation judgements

**Management Structure**

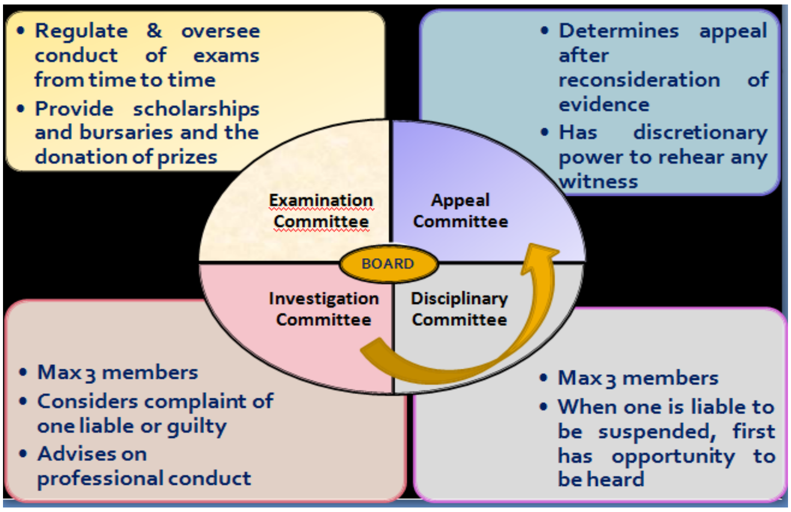


**Figure 7: Management structure of Insolvency Practitioners Association of Singapore**

The governing board of IPAS consists of board of directors with two designated representatives from each member and additional directors by Board. Maximum one-third shall retire each year but shall be eligible for reappointment. All meetings of the Board shall be chaired by Chairman; in his absence by Deputy Chairman and in the absence of both shall be elected by those present and voting. No director shall at the same time serve both the investigation and disciplinary committee. A meeting of the board may at any time be called by order of Chairman/ Deputy Chairman or at the request, in writing addressed to the Secretary, of two Directors. Appeal Committee shall comprise of Chairman, Deputy Chairman and one director, provided no member of the investigation or disciplinary committees who considered the matter earlier shall be eligible for appointment to appeal committee. The Governing Board consists of the following four regulatory committees namely Examination Committee, Investigation Committee, Disciplinary Committee and Appeal Committee.

Examination Committee regulates and oversees conduct of exams from time to time. It also provides scholarships and bursaries and the donation of prizes. Investigation Committee consists of maximum of three members. It considers complaint of one liable or guilty and also advises on professional conduct. Disciplinary Committee consists of maximum of three members. When one is liable to be suspended, first has the opportunity to be heard by the disciplinary committee. Appeal Committee determines appeal after reconsideration of evidence. It has discretionary power to rehear any witness.

**Business Model**

**Table 6: Business Model of Canadian Association of Insolvency and Restructuring Professionals**

| | | |
|---|---|---|
| **Key Activities**<br>1. Form a library, publish & distribute books, stats and literature on insolvency<br>2. Conduct examinations, professional development<br>3. Hold seminars, workshops, conferences and lectures<br>4. To merge entities formed to promote interests of IPs | **Principal Objects**:<br>➢ Provide a corporate identity and an organization for insolvency practitioners and finance and other professionals<br>➢ Advance the status and interest of insolvency professionals<br>➢ Regulate & protect the character of the insolvency profession | **Customer Segments**<br>6 Classes get membership:<br>1) Member (Max 20 in no.)<br>2) Associates<br>3) Corporate Associates<br>4) Student Associates<br>5)Honorary members<br>6)Fellows<br>Associates, Corporate Associates and Student Associates can be maximum 5000 in number |
| **Cost stream**<br>1. Scholarships, bursaries, donation and prizes<br>2. Remuneration, pensions<br>3. Grants to universities & other educational establishments<br>4. Gifts for national, public or charity | | **Revenue Stream**<br>1. Annual membership fees, annual fees of any of the associates<br>2. Borrow or raise sums on property/assets of IPAS<br>3. Invested in authorized securities, mortgage, publicly quoted securities |

The key activities of IPAS include forming a library, publishing and distributing books, statistics and literature on insolvency, conducting examinations, professional development courses, seminars, workshops, conferences and lectures, merging entities formed to promote interests of insolvency professionals. The principal objective of IPAS is to provide a corporate identity and an organization for insolvency practitioners, finance professionals and others, advance the status and interest of insolvency professionals, to regulate and protect the character of the insolvency profession. There are six classes of membership namely member (there can be maximum of twenty members), associates, corporate associates, student associates, honorary members and fellows. The costs incurred include scholarships, bursaries, donation and prizes, remuneration and pensions, grants to universities and other educational establishments, gifts for national, public or charity. The revenue streams included annual membership fees, annual fees of any of the associates, borrowed or raised sums on property or assets of IPAS etc.

**Independence of Chairman**

The tenure varies from 12-15 months. IPAS holds annual general meeting in each calendar year and each annual general meeting takes place no more than 15 months following the previous annual general meeting. Time and place of annual general meeting is determined by the board. However, he/she is eligible for reappointment after one calendar year. He may tender his resignation of office by notice in writing to the Board and shall cease to hold office only upon acceptance by the Board of his resignation notice. He may be removed by a vote of 75% majority in a meeting of all other directors or by disqualification. Eligibility conditions for qualification include non-violation of any rule and non-

commitment of any breach of bye-laws willfully, non-conviction of a felony or misdemeanor or is non-commitment of any fraud declared by any court of competent jurisdiction, not guilty of any act or default discreditable to the insolvency profession or a member, associate, corporate associate, student associate or fellow of IPAS, not adjudged bankrupt or satisfies a judgment debt or individually or as partner does not make assignments for the benefits of creditors, not a declared lunatic, no outstanding subscription fees or other sum payable to IPAS. Violation of any of these conditions will result in disqualification.

**Regulatory Oversight**

The various laws governing insolvency administration in Singapore include companies act (chapter 50), companies (winding act) rules, company regulations, bankruptcy act (1995) and bankruptcy rules and Singapore companies (amendment) act 2017. The Insolvency and Public Trustee's Office (IPTO), a department under Ministry of Law is involved in formulation of insolvency policy/legislation, regulation of insolvency practice/administration, administers corporate insolvency as Official Receiver and administers personal insolvency as Official Assignee.

## RESEARCH FINDINGS AND SUGGESTIONS

**Table 7: Performance of Canada, Singapore, United Kingdom and India in Resolving Insolvency according to World Bank Doing Business 2018 Data**

| Economy | Resolving Insolvency | | | | | | | | Ease of doing Business | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Recovery Rate (cents on the Dollar) | DTF | Strength of Insolvency Framework Index (0-16) | DTF | DTF Average | DTF Average Rounded | Ease of Resolving Insolvency (DTF) | Ease of Resolving Insolvency RANK | Rank as of Current Data | Overall DTF Score |
| Canada | 87.5 | 94.17 | 11.0 | 68.75 | 81.46 | 81.46 | 81.46 | 11 | 18 | 79.29 |
| Singapore | 88.7 | 95.49 | 8.50 | 53.125 | 74.309 | 74.31 | 74.31 | 27 | 2 | 84.57 |
| United Kingdom | 85.2 | 91.73 | 11.0 | 68.75 | 80.24 | 80.24 | 80.24 | 14 | 7 | 82.22 |
| India | 26.4 | 28.366 | 8.50 | 53.125 | 40.7456 | 40.75 | 40.75 | 103 | 100 | 60.76 |

After analyzing and evaluating the insolvency regimes in United Kingdom, Canada and Singapore, the following inferences and suggestions have been extrapolated in case of India:

- Management structure – The advisory committee, with the approval of the Governing Board, should be empowered to form certain other committees as may be deemed necessary for discharging the duties of IPA. The Advisory Committee should review the working of such committees from time to time on a periodic basis.
- Independence of the Chairman – The Chair of the Governing Board must be appointed using a search committee. It must be ensured that the Chair is rotated in every annual general meeting as prevalent in the case of U. K.'s IPA to avoid effects of bygone interests and maintain transparency in operations.
- Business model – The operating model suggested for India's IPA is demonstrated using the below figure:

**Table 8: Business Model Recommended for India's Insolvency Professional Agencies**

| | | |
|---|---|---|
| **Key Activities**<br>1. Form a library, publish periodicals, journals, circulars and books<br>2. Conduct examinations and continuous professional development courses<br>3. Hold seminars, workshops, debates, conferences and lectures<br>4. To merge entities formed to promote interests of insolvency professionals | **Principal Objects**:<br>➢ Provide a corporate identity and an organization for insolvency practitioners, finance and other professionals<br>➢ Advocate IPA members as front line professionals on all insolvency & bankruptcy issues<br>➢ Promote & maintain high standards in the performance and discharge of all functions & powers regarding insolvency administration | **Customer Segments**<br>6 Classes get membership:<br>1) Member Firms<br>2) Affiliates (corporate and individual)<br>3) Life and articling associates<br>4) Student associates<br>5) Honorary members<br>6) Fellows |
| **Cost stream**<br>1. Scholarships, bursaries, donations<br>2. Remuneration, gratuities and pensions<br>3. Grants and gifts to public, national, educational and charitable establishments<br>4. Interest on debt and insurance indemnity premiums | | **Revenue Stream**<br>1. Annual membership fees, annual fees of any of the affiliates and associates<br>2. Borrow money on credit, Bill of Exchange, promissory notes<br>3. Invested in authorized securities, mortgage, publicly quoted securities |

India's performance in ease of doing business has been improving since 2015. The distance to frontier score of India is 60.76 against the frontier of 92.9 (Norway). India's rank has decreased from 131 to 100 from 2015 to 2017 indicating that barriers to business activities have reduced. During the same period, India's rank in resolving insolvency has also improved from 136 to 103 which indicates that there is a correlation between ease of doing business and resolving insolvency.

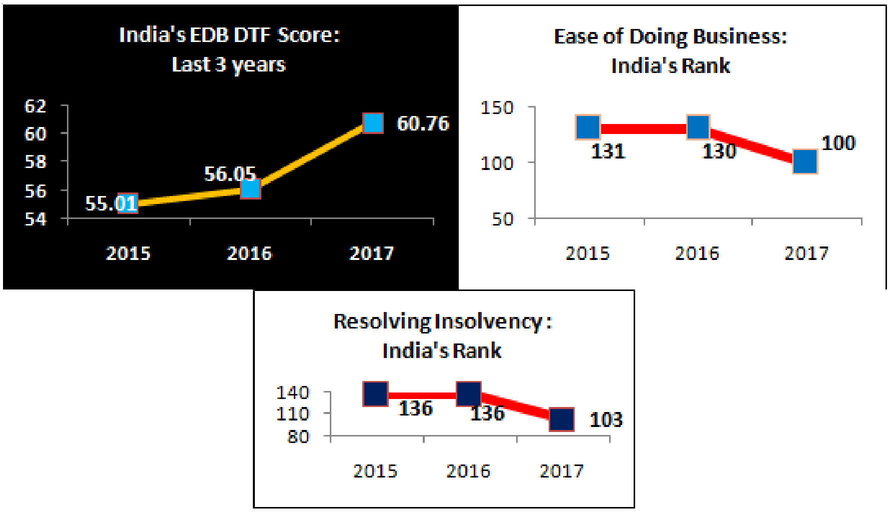


**Figure 8: Distance to Frontier Scores, ease of doing Business Ranks and Resolving Insolvency Ranks of India of 2015, 2016 and 2017**

## CONCLUSIONS

Bankruptcy is the state of insolvency wherein the company or the person is not able to repay the creditors the debt amount. Bankruptcy process and its resolution is of prime importance to the various stakeholders of the company, the economy and the society as a whole. The purpose of this research was to propose a functional model for the Indian

insolvency professional agencies. In future, the bankruptcy prediction model can be developed for improving the efficiency. In India, we have always paid more attention to the restructuring and winding up processes for companies. However, other models abroad as discussed in this paper, have more comprehensive mechanism for tackling insolvency cases keeping interests of all stakeholders protected. India needs to build a competitive environment among the insolvency professional agencies for creating urgency in them to resolve insolvency cases. The operating model suggested in this paper will make these agencies self-sustainable over a period of time to become empowered to act against detractors. The future of insolvency professional agencies lies in their effective governance and implementation for time-bound delivery.

***REFERENCES***

1. *The Companies Act 1985, (2017, December), Company limited by guarantee and not having share capital, Articles of Association of Insolvency Practitioners Association*
2. *The Companies Act 1985, (2009, May), Company limited by guarantee and not having share capital, Memorandum of association of Insolvency Practitioners Association*
3. *The Companies Act, Cap.50, Republic of Singapore, (2005, April), Insolvency Practitioners Association of Singapore Limited, Memorandum and Articles of Association of Insolvency Practitioners Association of Singapore Limited*
4. *The Gazette of India, (2016, May), The Insolvency and Bankruptcy Board of India*
5. *Submission of Canadian Association of Insolvency and Restructuring Professionals,(2014, July), Report on the statutory review of the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA)*
6. *IBBI, (2016, November), Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations*
7. *Adewoye, J. O., & Olaoye, C. O. (2014). Usage of information technology to enhance professional Productivity among accountants in Ekiti State. International Journal of Accounting and Financial Management Research (IJAFMR), 4(2), 7-18.*
8. *IBBI,(2016, November), Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations*
9. *Ernst and Young, (2017, January), Interpreting the Code – Corporate Insolvency in India*
10. *Rajeswari Sengupta& Anjali Sharma, (2015, December), Corporate Insolvency Resolution in India: Lessons from cross-country comparison*
11. *Behari, Alka. (2014). Professional Development of Elementary Teacher Educators: Issues and Challenges. IMPACT: International Journal of Research in Humanities, Arts and Literature, 43-44.*
12. *Bylaws of the Canadian Association of Insolvency and Restructuring Professionals, available at: https://cairp.ca/insolvency-professionals/professional-development/bylaws/*
13. *Time to resolve insolvency (years), (2018), World Bank, Doing Business project, available at:*

    *https://data.worldbank.org/indicator/IC.ISV.DURS*
14. *Rankings & Ease of Doing Business Score, (2018), World Bank, Doing Business project, available at:*

    *http://www.doingbusiness.org/en/rankings*